

**The Internal Revenue Service Cannot Monitor  
Its Compliance With the Direct Contact  
Provisions**

**September 2002**

**Reference Number: 2002-40-177**

**This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

September 11, 2002

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner  
Acting Inspector General

SUBJECT: Final Audit Report - The Internal Revenue Service Cannot  
Monitor Its Compliance With the Direct Contact Provisions  
(Audit # 200240016)

This report presents the results of our review to determine if the Internal Revenue Service (IRS) complied with legal guidelines dealing with directly contacting taxpayers and their representatives set forth in Internal Revenue Code (I.R.C.) §§ 7521(b)(2) and (c) (1986).

In summary, we could not determine if the IRS fully complied with the requirements of I.R.C. §§ 7521(b)(2) and (c). The Treasury Inspector General for Tax Administration (TIGTA) is required under I.R.C. § 7803(d)(1)(A)(ii) (Supp. IV 1998) to annually evaluate the IRS' compliance with the direct contact provisions of the law. This is the fourth year in which the TIGTA has reported its inability to give an opinion on the IRS' compliance with these legal guidelines. IRS management information systems do not separately record or monitor direct contact requirements, and the Congress has not explicitly required the IRS to do so. Furthermore, the TIGTA does not recommend the creation of a separate tracking system. Accordingly, we are not making any formal recommendations in this report.

In response to the TIGTA's Fiscal Year 2001 report,<sup>1</sup> the IRS proposed revising the Internal Revenue Manual (IRM) to have first-line managers address this issue through group meetings, case reviews, on-the-job visits, and taxpayer or representative inquiries. We determined that the IRM has not been revised, but a memorandum was issued to the Small Business/Self-Employed first-line managers in March 2002 that contained the same language as in the proposed IRM revisions.

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<sup>1</sup> Letter Report: *The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions* (Reference Number 2001-10-116, dated July 2001).

Management's Response: IRS management was pleased that our review of direct contact complaints showed no IRS employee violations of the direct contact provisions of the I.R.C. and agreed that their management information systems do not monitor compliance with direct contact provisions. The IRS has no plans to create a separate tracking system to monitor compliance with the direct contact provisions.

The IRS provided instructions to its field group managers to take any steps necessary to ensure employees are complying with direct contact provisions and plans to include these instructions in the IRM.

Management's complete response to the draft report is included as Appendix IV.

Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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### Background

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The Taxpayer Bill of Rights<sup>1</sup> created a number of safeguards to protect taxpayers being interviewed by an Internal Revenue Service (IRS) employee as part of a tax audit or collection action. Specifically, IRS employees are required to:

- Stop a taxpayer interview (unless the interview is required by court order) whenever a taxpayer requests to consult with a representative (someone who is permitted to represent taxpayers before the IRS).
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of a tax audit or collection action.

The provisions were created to protect the rights of taxpayers who are interviewed by an IRS employee as part of a tax audit or collection action. A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

The Treasury Inspector General for Tax Administration (TIGTA) is required under Internal Revenue Code (I.R.C.) § 7803(d)(1)(A)(ii) (Supp. IV 1998) to annually evaluate the IRS' compliance with the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c)(1986). In Fiscal Years (FY) 1999,<sup>2</sup> 2000,<sup>3</sup> and 2001,<sup>4</sup> the TIGTA

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<sup>1</sup> Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647, 102 Stat. 3731 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).

<sup>2</sup> *The Internal Revenue Service Needs to Enhance Guidance on and Monitoring of Compliance with Procedures for Directly Contacting Taxpayers and Their Representatives* (Reference Number 1999-10-076, dated September 1999).

<sup>3</sup> *Letter Report: Improvements Have Been Implemented for Directly Contacting Taxpayers and Their Representatives* (Reference Number 2000-10-132, dated September 2000).

<sup>4</sup> *Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions* (Reference Number 2001-10-116, dated July 2001).

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reported that it could not determine whether IRS employees complied with the required procedures because the IRS was unable to readily identify any cases for the TIGTA's reviews. Current IRS management information systems do not separately record or monitor cases where taxpayers had requested to consult with a representative or where IRS employees bypassed taxpayer representatives and contacted the taxpayers directly. Moreover, there is no legal requirement for the IRS to develop a separate system that records or monitors cases involving these two procedures.

This review was conducted at the IRS National Headquarters and the Small Business/Self-Employed (SB/SE) Division Headquarters during May and June 2002. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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As in the prior reviews, the TIGTA could not determine whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. Neither the IRS nor the TIGTA could readily identify cases where the taxpayer requested a representative or the IRS contacted the taxpayer directly and bypassed the representative.

The TIGTA recommended in its FY 1999 report that a process be developed to monitor IRS employee compliance with the law when a taxpayer requests to consult with a representative or when an IRS employee disregards the taxpayer's request and bypasses a representative. In its response, the IRS stated it planned to implement a survey process to capture information from taxpayers interviewed by IRS employees. It also planned to include the direct contact issues in its quality review process.

However, in their response to the TIGTA's FY 2001 report, IRS management stated that they no longer agreed that a survey was the correct approach. They believe an additional survey would impose undue taxpayer burden. In addition, they stated that including the direct contact issues in the IRS' quality review process was not feasible because there

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are no expectations for an IRS employee to document what did not occur in the course of the taxpayer contact. Therefore, these types of comments are generally not included in the case files.

As an alternative, IRS management planned to have field group managers take steps to help ensure employee compliance with the laws concerning direct contacts with taxpayers. These instructions were to be included in a revision of the Internal Revenue Manual (IRM). As of May 2002, the IRM had not been revised to include this guidance.

However, in March 2002 the SB/SE Division issued a memorandum to its first-line managers explaining that they are to take whatever steps are necessary (including case reviews, on-the-job visits, and taxpayer or representative inquiries) to help ensure their employees complied with the direct contact provisions of the law.

Even though the IRS does not monitor its employees' compliance with the direct contact provisions, the TIGTA Office of Investigations tracks taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly. A review of the 11 direct contact complaints received and closed by the TIGTA between November 1999 and April 2002 showed that none of the IRS employees violated the direct contact provisions of the I.R.C.

This is the fourth year in which the TIGTA has reported its inability to give an opinion on the IRS' compliance with the direct contact provisions of the I.R.C. The TIGTA does not recommend the creation of a separate tracking system. Accordingly, we are not making any formal recommendations in this report.

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### Appendix I

#### Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine if the Internal Revenue Service (IRS) complied with legal guidelines dealing with directly contacting taxpayers and their representatives set forth in Internal Revenue Code §§ 7521(b)(2) and (c) (1986). To accomplish this objective, we:

- I. Interviewed an executive in the Small Business/Self-Employed (SB/SE) Division to determine if the IRS has implemented or plans to implement a system to track cases where taxpayers have requested to consult with a representative or where an IRS employee bypassed a representative.
- II. Determined the status of the alternative corrective actions proposed by the IRS in its response to the Treasury Inspector General for Tax Administration's (TIGTA) Fiscal Year 2001 report.<sup>1</sup>
  - A. Reviewed the Internal Revenue Manual to determine if it had been revised to incorporate the proposed changes.
  - B. Obtained and reviewed a memorandum issued by the SB/SE Division in March 2002 instructing first-line managers to take whatever steps necessary to ensure direct contact prohibitions are understood and followed by employees.
- III. Interviewed various IRS and TIGTA personnel responsible for the Taxpayer Advocate Management Information System (TAMIS),<sup>2</sup> the Executive Control Management System (ECMS),<sup>3</sup> and the Performance and Results Information System (PARIS)<sup>4</sup> to determine if there is a system or plans for a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
  - A. Identified 11 direct contact complaints received and closed by the TIGTA Office of Investigations from November 1999 to April 2002.
  - B. Obtained and reviewed the complaint files to determine their validity and what actions were taken by the IRS as a result of the complaints.

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<sup>1</sup> *Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions* (Reference Number 2001-10-116, dated July 2001).

<sup>2</sup> The TAMIS is an electronic database and case inventory control system used by Taxpayer Advocate Service employees.

<sup>3</sup> The ECMS is an application used by the IRS to assign, control, and track information and correspondence.

<sup>4</sup> The PARIS is a management information system that provides the TIGTA the ability to manage and account for the thousands of complaints received and investigations initiated annually.



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**Appendix II**

**Major Contributors to This Report**

Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs)

Augusta R. Cook, Director

Bryce Kisler, Audit Manager

Mary Lynn Faulkner, Senior Auditor

Kristi Larson, Senior Auditor

David Hartman, Auditor

Patricia Jackson, Auditor

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**Appendix III**

**Report Distribution List**

Deputy Commissioner N:DC  
Commissioner, Large and Mid-Size Division LM  
Commissioner, Small Business/Self Employed Division S  
Commissioner, Tax Exempt and Government Entities Division T  
Commissioner, Wage and Investment Division W  
Director, Compliance, Small Business/Self-Employed Division S:C  
Director, Compliance, Wage and Investment Division W:CP  
Director, Strategy and Finance W:S  
Chief, Customer Liaison S:COM  
Chief Counsel CC  
National Taxpayer Advocate TA  
Director, Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O  
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Audit Liaisons:  
    Director, Compliance, Small Business/Self-Employed Division S:C  
    Director, Compliance, Wage and Investment Division W:CP  
    Executive Assistant, Director, Communications and Liaison CL

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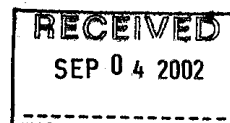
**Appendix IV**

**Management's Response to the Draft Report**



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

AUG 30 2002



**MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT**

**FROM:** *JK* Joseph G. Kehoe *Joe G. Kehoe*  
Commissioner, Small Business/Self-Employed Division

**SUBJECT:** Draft Audit Report – The Internal Revenue Service Cannot  
Monitor Its Compliance With the Direct Contact Provisions  
(Audit # 200240016)

I have reviewed your report and agree that our management information systems do not monitor compliance with direct contact provisions. I am pleased your review of the eleven direct contact complaints received from taxpayers between November 1999 and April 2002, showed no IRS employees violated the direct contact provisions of the Internal Revenue Code.

We provided instructions to our field group managers to take any steps necessary to ensure employees are complying with direct contact provisions. We will include these instructions in the Internal Revenue Manual.

We have no plans to create a separate tracking system to monitor compliance with the direct contact provisions.

If you have any questions, please contact me, or Joseph R. Brimacombe, Deputy Director, Compliance Policy, at (202) 283-2200.